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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/973,975	10/11/2001	Robert W. Casey	RWC 01065	9812

7590 10/04/2002

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EXAMINER

AMARANTIDES, JOHN

ART UNIT PAPER NUMBER

2875

DATE MAILED: 10/04/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/973,975

Applicant(s)

W. CASEY, ROBERT

Examiner

John Amarantides

Art Unit

2875

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 October 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## DETAILED ACTION

### *Specification*

1. The disclosure is objected to because of the following informalities:
  - a. Page 2, line 11, insert the word "can" between "that" and "be".
  - b. Page 4, line 13, change "second means (14)" to "first means (14)".
  - c. Page 4, line 14, change "an" to "and".
  - d. Page 4, line 17, change "second means (18)" to "first means (14)".

Appropriate correction is required.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1 – 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Demshki, Jr. (US006004005A) in view of N. Meyerowitz (US002979605).
  - a. In regard to claim 1, 6, and 8 – 12, Demshki, Jr. in Figure 1 discloses a track lighting fixture (10) with a fixture track (14) for securing the lighting system to a surface, a projection (bracket) assembly (46) with lock (50) to secure the cylindrical housing (16) containing the transformer and power leads to illuminate a plurality of incandescent lamps (MR16) in fixtures (12) to the track (14), which also contains 2 hot and 2 common electrical contacts (52). Demshki, Jr. does not disclose a rod for securing the lighting system to an inner surface of a fireplace. N. Meyerowitz in Figures 1, 2 and 4 discloses

Art Unit: 2875

an expandable tubular post member (10) with rods (32), thumb screw (64), boss (68) with tapered hole (collar), pads (34) and expandable-coiled spring (50). N. Meyerowitz does not disclose for use in a fireplace. Nevertheless, it is old and well known that lighting tracks and rods come in various shapes and colors and they can be mounted on walls, ceilings or between walls and ceilings such as in a fireplace. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains to use the tubular post member (10) with rods (32), thumb screw (64), boss (68) with tapered hole (collar), pads (34), expandable coiled spring (50) of N. Meyerowitz in place of the fixture track (14) of Demshki, Jr. to support the lighting system between two walls in the fireplace to create a soothing fireplace ambiance that is aesthetically pleasing to the viewers in a room.

b. In regard to claims 2, 3 and 5, Demshki, Jr. in the Abstract identifies electrical power, but not 110-volt power. Nevertheless, it is old and well known that residential power as well as commercial office space (power outlets) power is 110 volt. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains to use 110 volt electric power to illuminate the track lighting system of Demshki, Jr. in order to be able to illuminate the fireplace to create a soothing fireplace ambiance that is aesthetically pleasing to the viewers in a room.

c. In regard to claims 4 and 7, Demshki, Jr. in Column 3, lines 15 – 18 discloses that any combination of decorative inserts and lamp bulbs can be interchanged. Demshki, Jr. does not specifically disclose colored bulbs or a flasher arrangement to create a twinkle

Art Unit: 2875

effect. Nevertheless, it is old and well known that colored bulbs are sold in department and hardware stores, where ballasts are also sold to vary voltage to a bulb to create a twinkle effect. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains to use colored bulbs or a ballast to create a twinkle effect with the track lighting system of Demshki, Jr. in order to be able to illuminate the fireplace to create a soothing fireplace ambiance that is aesthetically pleasing to the viewers in a room.

4. Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Demshki, Jr. (US006004005A) in view of N. Meyerowitz (US002979605) as applied to claims 1, 8 and 12 above, and further in view of T. A. Stiffel (US002965751).

a. In regard to claims 13 and 14, N. Meyerowitz in Figure 1 discloses pads (34), but does not specifically disclose elastomeric or rubber pads. T. A. Stiffel in Figure 7 discloses a rubber foot (pad) member (60). Nevertheless, it is old and well known to pad furnishing legs to protect surfaces from getting scratched. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains to use the elastomeric rubber pads of T. A. Stiffel with the tubular post lighting system of N. Meyerowitz in order to protect surfaces from getting scratched.

### *Conclusion*

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following patents are cited to further show the state of the art with respect to track lighting systems:

a. US006059582A to Tsai

Art Unit: 2875


- b. US005772315A to Shen
- c. US005455754A to Hoffner

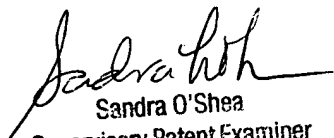
6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Amarantides whose telephone number is 703-305-4013.

The examiner can normally be reached 8:00am-4:30pm M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandy O'Shea can be reached on 703-305-4939. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9318 for regular communications and 703-308-8303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-3329.

JA   
September 30, 2002

  
Sandra O'Shea  
Supervisory Patent Examiner  
Technology Center 2800